

**United States District Court
Eastern District of Wisconsin (Milwaukee)
CIVIL DOCKET FOR CASE #: 2:23-cv-00159-LA**

Hulce v. Zipongo Inc
Assigned to: Judge Lynn Adelman
Cause: 47:227 Restrictions of Use of Telephone Equipment

Date Filed: 02/07/2023
Date Terminated: 03/18/2024
Jury Demand: Plaintiff
Nature of Suit: 485 Telephone Consumer
Protection Act (TCPA)
Jurisdiction: Federal Question

Plaintiff

James C Hulce

represented by **Brian K Murphy**
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V.

Defendant

Zipongo Inc
doing business as
Foodsmart

represented by **James Michael Ruley**
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Date Filed	#	Docket Text
02/07/2023	<u>1</u>	COMPLAINT with Jury Demand; against Zipongo, Inc. d/b/a Foodsmart by James C. Hulce. (Filing Fee PAID \$402 receipt number AWIEDC-4319263) (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons)(Paronich, Anthony)
02/07/2023		NOTICE Regarding assignment of this matter to Judge Lynn Adelman; Consent/refusal forms for Magistrate Judge Dries to be filed within 21 days; the consent/refusal form is available here . Pursuant to Civil Local Rule 7.1 a disclosure statement is to be filed upon the first filing of any paper and should be filed now if not already filed. (jcl)
02/08/2023		Summons Issued as to Zipongo Inc. (bx)
02/12/2023	<u>2</u>	SUMMONS Returned Executed by James C Hulce. Zipongo Inc served on 2/10/2023. (Paronich, Anthony)
02/16/2023	<u>3</u>	NOTICE of Appearance by Jonathan P Misny on behalf of James C Hulce. Attorney(s) appearing: Jonathan P. Misny (Misny, Jonathan)
02/16/2023	<u>4</u>	NOTICE of Appearance by Brian K Murphy on behalf of James C Hulce. Attorney(s) appearing: Brian K. Murphy (Murphy, Brian)
02/28/2023	<u>5</u>	STIPULATION <i>Joint to Extend Time</i> by Zipongo Inc. (Sanders, Maria)
03/01/2023	<u>6</u>	TEXT ONLY ORDER signed by Judge Lynn Adelman on 02/28/23 GRANTING <u>5</u> Stipulation Joint to Extend Time. Response due by 4/3/23. (cc: all counsel)(kmr)
03/30/2023	<u>7</u>	NOTICE of Appearance by Ryan D Watstein on behalf of Zipongo Inc. Attorney(s) appearing: Ryan D. Watstein (Watstein, Ryan)
03/30/2023	<u>8</u>	STIPULATION <i>Second Joint to Extend Time</i> by Zipongo Inc. (Watstein, Ryan)
03/31/2023	<u>9</u>	TEXT ONLY ORDER signed by Judge Lynn Adelman on 03/31/23 GRANTING <u>8</u> Stipulation Second Joint to Extend Time. Answer due by 04/17/2023. (cc: all counsel)(kmr)
04/05/2023	<u>10</u>	NOTICE of Change of Address by Ryan D Watstein (Watstein, Ryan)
04/17/2023	<u>11</u>	ANSWER to <u>1</u> Complaint <i>and Affirmative Defenses</i> by Zipongo Inc.(Watstein, Ryan)
04/17/2023	<u>12</u>	DISCLOSURE Statement by Zipongo Inc. (Watstein, Ryan)
04/18/2023		NOTICE from the clerk to ALL PARTIES COUNSEL requesting that the Consent/Refusal form to Magistrate Judge Stephen C. Dries be filed within 14 days ; the form is available here . (bx)
04/19/2023	<u>13</u>	Magistrate Judge Jurisdiction Form filed by Zipongo Inc. (NOTICE: Pursuant to Fed.R.Civ.P. 73 this document is not viewable by the judge.) (Sanders, Maria)
05/02/2023	<u>14</u>	Magistrate Judge Jurisdiction Form filed by James C Hulce. (NOTICE: Pursuant to Fed.R.Civ.P. 73 this document is not viewable by the judge.) (Murphy, Brian)
05/19/2023	<u>15</u>	Joint MOTION for Protective Order <i>and (Proposed) Stipulated Protective Order</i> by Zipongo Inc. (Attachments: # <u>1</u> Text of Proposed Order)(Watstein, Ryan)
05/22/2023	<u>16</u>	TEXT ONLY ORDER signed by Judge Lynn Adelman on 05/22/23 GRANTING <u>15</u> Motion for Protective Order. (cc: all counsel)(kmr)

05/22/2023	<u>17</u>	PROTECTIVE ORDER signed by Judge Lynn Adelman on 05/22/23. (cc: all counsel)(kmr)
05/22/2023	<u>18</u>	ORDER signed by Judge Lynn Adelman on 05/22/23. (cc: all counsel)(kmr)
05/22/2023	<u>19</u>	NOTICE of Hearing: IT IS ORDERED that a telephonic Fed. R. Civ. P. 16(b) scheduling conference will be held on June 30, 2023 at 9:45 a.m. The court will initiate the call. The participation of the attorney who will be handling the case is required and their telephone number should be provided in the Rule 26(f) report. (cc: all counsel)(kmr)
06/13/2023	<u>20</u>	JOINT REPORT of Rule 26(f) Plan by James C Hulce. (Paronich, Anthony) Modified on 6/14/2023 (amh).
06/30/2023	<u>21</u>	Minute Entry for proceedings held before Judge Lynn Adelman: Scheduling Conference held on 6/30/2023. Court to adopt parties' proposed schedule. (kmr)
06/30/2023	<u>22</u>	SCHEDULING ORDER: signed by Judge Lynn Adelman on 06/30/23. Discovery due by 9/1/2023. Motions due by 10/1/2023. Rule 26(a) Disclosures to be exchanged by 6/14/2023. (cc: all counsel)(kmr)
08/15/2023	<u>23</u>	NOTICE of Appearance by James Michael Ruley on behalf of Zipongo Inc. Attorney(s) appearing: James M. Ruley (Ruley, James)
09/01/2023	<u>24</u>	Joint MOTION for Extension of Time (<i>Joint Motion for Extension of Phase I Discovery and to Set Briefing Schedule on Dispositive Motions</i>) by Zipongo Inc. (Ruley, James)
09/05/2023	25	TEXT ONLY ORDER signed by Judge Lynn Adelman on 9/5/2023 GRANTING <u>24</u> Joint MOTION for Extension of Time. (<i>Joint Motion for Extension of Phase I Discovery and to Set Briefing Schedule on Dispositive Motions</i>) (cc: all counsel)(amh)
09/06/2023		Set/Reset Deadlines: Phase 1 Discovery due by 10/1/2023; Dispositive Motions due by 10/31/2023. (mlm)
10/31/2023	<u>26</u>	Joint MOTION to Modify <i>Dispositive Motion Briefing Schedule</i> by Zipongo Inc. (Ruley, James)
11/01/2023	27	TEXT ONLY ORDER signed by Judge Lynn Adelman on 11/1/2023 GRANTING <u>26</u> Motion to Modify Dispositive Motion Briefing Schedule. Summary Judgment Motion due 11/7/2023. Opposition to the Summary Judgment Motion due 12/15/2023. Reply in Support of the Summary Judgment Motion due 1/5/2024. (cc: all counsel)(amh)
11/07/2023	<u>28</u>	MOTION for Summary Judgment by Zipongo Inc. (Attachments: # <u>1</u> Memorandum of Law in Support of Motion for Summary Judgment, # <u>2</u> Ex. A – Scharen Declaration, # <u>3</u> Ex. B – Hulce Deposition, # <u>4</u> Ex. C – Hamilton Declaration, # <u>5</u> Proposed Findings of Fact)(Ruley, James)
11/08/2023		NOTICE of Electronic Filing Error re <u>28</u> MOTION for Summary Judgment filed by Zipongo Inc. Certain attachments to this document should have been filed as separate entries. This document does not need to be re-filed; Please refer to the policies and procedures for electronic case filing and the user manual found at www.wied.uscourts.gov (mlm)
12/12/2023	<u>29</u>	Joint MOTION to Modify <i>the Dispositive Motion Briefing Schedule</i> by James C Hulce. (Misny, Jonathan)
12/13/2023	30	TEXT ONLY ORDER signed by Judge Lynn Adelman on 12/13/2023; GRANTING <u>29</u> JOINT MOTION to Modify the Dispositive Motion Briefing Schedule. (cc: all counsel)(bx)
12/29/2023	<u>31</u>	MOTION to Restrict Document to <i>Restrict Access to Memorandum in Opposition to Defendant's Motion for Summary Judgment and Certain Exhibits to the Deposition of Jared Scharen</i> by James C Hulce. (Misny, Jonathan)
12/29/2023	<u>32</u>	DECLARATION of Jonathan P. Misny (Attachments: # <u>1</u> Exhibit A – Transcript of Deposition of Jared Scharen, # <u>2</u> Exhibit 2 to Scharen Deposition, # <u>3</u> Exhibit 2 to Scharen Deposition, # <u>4</u> Exhibit 3 to Scharen Deposition, # <u>5</u> Exhibit 3 to Scharen Deposition, # <u>6</u> Exhibit 4 to Scharen Deposition, # <u>7</u> Exhibit 4 to Scharen Deposition, # <u>8</u> Exhibit 7 to Scharen Deposition, # <u>9</u> Exhibit 7 to Scharen Deposition, # <u>10</u> Exhibit

		8 to Scharen Deposition, # <u>11</u> Exhibit 8 to Scharen Deposition, # <u>12</u> Exhibit 12 to Scharen Deposition, # <u>13</u> Exhibit 12 to Scharen Deposition, # <u>14</u> Exhibit 13 to Scharen Deposition, # <u>15</u> Exhibit 15 to Scharen Deposition, # <u>16</u> Exhibit 15 to Scharen Deposition, # <u>17</u> Exhibit 17 to Scharen Deposition, # <u>18</u> Exhibit B – Transcript of Deposition of James C. Hulce, # <u>19</u> Exhibit 2 to Hulce Deposition, # <u>20</u> Exhibit 3 to Hulce Deposition, # <u>21</u> Exhibit 4 to Hulce Deposition, # <u>22</u> Exhibit 5 to Hulce Deposition, # <u>23</u> Exhibit 6 to Hulce Deposition) This document and/or certain attachments are restricted to case participants and attorneys of record should use their e-filing login and password to view this document (Misny, Jonathan) Per <u>38</u> Order, ECF Nos. 32–3, 32–5, 32–7, 32–9, 32–11, 32–13, and 32–16 unrestricted on 3/18/2024. Docket text modified 3/19/2024 (mew).
12/29/2023	<u>33</u>	BRIEF in Opposition filed by James C Hulce re <u>31</u> MOTION to Restrict Document to Restrict Access to Memorandum in Opposition to Defendant's Motion for Summary Judgment and Certain Exhibits to the Deposition of Jared Scharen, <u>28</u> MOTION for Summary Judgment . (Attachments: # <u>1</u> Restricted Memorandum in Opposition to Defendant's Motion for Summary Judgment) This document and/or certain attachments are restricted to case participants and attorneys of record should use their e-filing login and password to view this document (Misny, Jonathan) Per <u>38</u> Order, ECF No. 33–1 unrestricted on 3/18/2024. Docket text modified 3/19/2024 (mew).
12/29/2023	<u>34</u>	STATEMENT OF FACT by James C Hulce <i>Response to Defendant's Proposed Findings of Fact in Support of its Motion for Summary Judgment</i> . (Misny, Jonathan)
12/29/2023	<u>35</u>	STATEMENT OF FACT by James C Hulce <i>Additional Facts Requiring Denial of Defendant's Motion for Summary Judgment</i> . (Misny, Jonathan)
12/29/2023		NOTICE of Electronic Filing Error re <u>34</u> Statement of Fact filed by James C Hulce ; This document does not match the docket entry; This document does not need to be re–filed; Please refer to the policies and procedures for electronic case filing and the user manual found at www.wied.uscourts.gov (jcl) (Entered: 01/02/2024)
01/19/2024	<u>36</u>	REPLY BRIEF in Support filed by Zipongo Inc re <u>28</u> MOTION for Summary Judgment . (Attachments: # <u>1</u> Ex. A, # <u>2</u> Ex. B) (Ruley, James)
01/19/2024	<u>37</u>	REPLY BRIEF in Support filed by Zipongo Inc re <u>28</u> MOTION for Summary Judgment <i>Response in Opposition to Plaintiff's Proposed Findings of Fact</i> . (Ruley, James)
01/22/2024		NOTICE of Electronic Filing Error re <u>36</u> Reply Brief in Support of Motion filed by Zipongo Inc. All attachments to documents should include a brief description of the attachment – Ex A–Initial Contract, Ex B–Doe Deposition, Ex C–2006 Sales Figures, etc. This document does not need to be refiled.; Please refer to the policies and procedures for electronic case filing and the user manual found at www.wied.uscourts.gov (mlm)
03/18/2024	<u>38</u>	DECISION AND ORDER signed by Judge Lynn Adelman on 3/18/2024. IT IS ORDERED that defendants' motion for summary judgment (ECF No. <u>28</u>) is GRANTED. IT IS FURTHER ORDERED that plaintiff's motion to restrict access (ECF No. <u>31</u>) is DENIED. The Clerk of Court shall remove the restrictions on ECF Nos. 32–3, 32–5, 32–7, 32–9, 32–11, 32–13, 32–16 and 33–1. FINALLY, IT IS ORDERED that the Clerk of Court shall enter final judgment. Additional details in order. (cc: all counsel)(amh)
03/18/2024	<u>39</u>	JUDGMENT signed by Deputy Clerk on 3/18/2024. (cc: all counsel)(amh)
04/17/2024	<u>40</u>	NOTICE OF APPEAL as to <u>39</u> Judgment, <u>38</u> Order on Motion for Summary Judgment,, Order on Motion to Seal Document, by James C Hulce. Filing Fee PAID \$605, receipt number AWIEDC–4657379 (cc: all counsel) (Murphy, Brian)
04/17/2024	<u>41</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>40</u> Notice of Appeal (lmf)